

1 HONORABLE JAMES L. ROBART
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 MICROSOFT CORPORATION,

14 Plaintiff,

15 v.

16 MOTOROLA INC., et al.,

17 Defendant.

18 No. C10-1823-JLR

19 MICROSOFT'S EXCEPTIONS TO
20 FINAL JURY INSTRUCTIONS AND
21 VERDICT FORM

22 MOTOROLA MOBILITY, LLC., et al.,

23 Plaintiffs,

24 v.

25 MICROSOFT CORPORATION,

26 Defendant.

27 MICROSOFT'S EXCEPTIONS TO FINAL JURY
28 INSTRUCTIONS AND VERDICT FORM

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1 Microsoft respectfully submits the following exceptions to the Court's Final Jury
 2 Instructions and Verdict Form, as distributed to the parties at noon on Tuesday, September 3,
 3 2013.

4 **I. MICROSOFT'S EXCEPTIONS TO FINAL JURY INSTRUCTIONS**

5 **A. Instruction No. 8**

6 Microsoft takes exception to Instruction No. 8 on Credibility of Witnesses which might
 7 leave the jury uncertain how to consider undisputed facts that came in through witnesses. The
 8 Court's rulings required Microsoft to put certain Findings of Fact from the Court's Findings of
 9 Fact and Conclusions of Law (Dkt. No. 673) into the record through witnesses. Microsoft
 10 proposes resolving this issue with an instruction on Undisputed Facts, reading "Facts
 11 represented during the trial as undisputed should be taken as true, but are not entitled to any
 12 more weight in your decision than any other facts." This instruction would precede Instruction
 13 No. 10 on Stipulated Facts, and will assist the jury in understanding the distinction in how
 14 certain facts have been entered into the record.

15 **B. Instruction No. 14**

16 Microsoft takes exception to Instruction No. 14 for two reasons. First, the portion of
 17 the instruction concerning Marvell should read that Motorola breached "by failing to offer a
 18 RAND license covering its 802.11 standard essential patents to Marvell, Microsoft's chip
 19 supplier, and instead offering Marvell a license that was not RAND and was discriminatory in
 20 excluding Marvell products sold to Microsoft from the scope of the license Motorola
 21 proposed." The current language "by having not executed a license agreement" suggests to the
 22 jury that Marvell's response to Motorola's offer is relevant. It is not relevant, because only
 23 unreasonable and discriminatory terms were ever offered—there was no path for Marvell to
 24 conclude a RAND license with Motorola. The proposed articulation of Microsoft's claim as to
 25 Marvell is laid out in the Pretrial Order. (Dkt. No. 803 at 2–4.) Second, as to both the IEEE
 26

1 and ITU contract the additional clause “by violating the covenant of good faith and fair dealing
 2 implied in every contract” should be added. Microsoft has alleged both a straight breach of
 3 contract and a breach of the duty of good faith and fair dealing. These grounds were separately
 4 and specifically stated in the Pretrial Order. (*See* Dkt. No. 803 at 2–4.)

5 **C. Instruction No. 15**

6 Microsoft takes exception to Instruction No. 15 for the language “that Microsoft was damaged
 7 as a result of Motorola’s breach.” The word “damaged” should be replaced by “harmed”
 8 because this is a case where nominal damages are relevant and Microsoft has sought equitable
 9 relief. The jury only needs to find that the breach harmed Microsoft in some way, and should
 10 consider that harm as potentially in addition to the specific categories of monetary damages
 11 sought by Microsoft.

12 **D. Instruction No. 16**

13 Microsoft takes exception to Instruction No. 16 in its entirety and seeks a directed
 14 verdict that Motorola breached the duty of good faith and fair dealing for the reasons set forth
 15 in Microsoft’s July 3, 2013 Motion for Summary Judgment and the state of the record at trial.
 16 Additionally, Microsoft takes exception to the inclusion of Factor (6) on subjective factors and
 17 this factor should not be included. Motorola’s lack of ill intent *would not* excuse its conduct if
 18 it has breached under one or a combination of the other grounds. As the current language of
 19 the instruction states, “Bad motive or intent does not necessarily imply bad faith, and good
 20 motive or intent does not necessarily imply good faith. Likewise, bad motive or intent is not a
 21 prerequisite to bad faith, nor is good motive or intent a prerequisite to good faith.” That
 22 statement of the law—drawn from the Court’s summary judgment order—means that in this
 23 case there is no need for an instruction on subjective intent. Whether the jury believes
 24 Motorola acted with bad or good motives, that belief will not determine the result on liability.
 25 If the jury believes Motorola had bad motives, that will not necessarily imply bad faith—and

1 Microsoft will have to establish breach on the other grounds. If the jury believes Motorola had
 2 good motives, Microsoft will still have to establish breach on other grounds—for example, that
 3 Motorola's conduct nonetheless frustrated the purposes of the contracts.

4 Additionally, in support of the addition of “alone or in combination” that appears in the
 5 current draft of the instruction, Microsoft provides additional case citations for these principles
 6 in the footnotes that follow, each of which shows that a violation of the duty of good faith and
 7 fair dealing can be based on the related factor alone. As to “Whether Motorola’s actions were
 8 contrary to the reasonable and justified expectations of other parties to the contract,” *see Frank*
 9 *Coluccio Const. Co., Inc. v. King County*, 150 P.3d 1147, 1155 (Wash. Ct. App. 2007) (citing
 10 RESTATEMENT (SECOND) OF CONTRACTS § 205 cmt. a). As to “Whether Motorola’s
 11 conduct would frustrate the purpose of the contract,” *see Lizotte v. Schumacher*, 105 Wn. App.
 12 1029, 2001 WL 293165, at * 7 (Wash. App. Mar. 27, 2001) (“A subsequent agreement
 13 between the remaining litigants designed to frustrate this purpose would be a violation of
 14 Schumacher Painting’s implied duty of good faith and fair dealing and a breach of its
 15 stipulation with the tenants.”); *Aventa Learning, Inc. v. K12, Inc.*, 830 F. Supp. 2d 1083, 1101
 16 (W.D. Wash. 2011) (Robart, J.) (“The duty prevents a contracting party from engaging in
 17 conduct that frustrates the other party’s right to the benefits of the contract.”). As to “Whether
 18 Motorola’s conduct was commercially reasonable,” *see Craig v. Pillsbury Non-Qualified*
 19 *Pension Plan*, 458 F.3d 748, 752 (8th Cir. 2006) (applying Washington law); *Vylene Enters., Inc. v. Naugles, Inc.*, 90 F.3d 1472, 1477 (9th Cir. 1996) (applying California law). As to
 20 “Whether and to what extent Motorola’s conduct conformed with ordinary custom or practice
 21 in the industry,” *see Curtis v. Northern Life Ins. Co.*, 2008 WL 4927365, at *6 (Wash. Ct. App.
 22 2008) (unpublished); *Amerographics, Inc. v. Mercury Cas. Co.*, 107 Cal. Rptr. 3d, 321-23 (Cal.
 23 Ct. App. 2010). As to “To the extent the contract vested Motorola with discretion in deciding
 24 how to act, whether Motorola exercised that discretion reasonably,” *see Scribner v. Worldcom*,
 25

1 *Inc.*, 249 F.3d 902, 910 (9th Cir. 2001) (“Good faith limits the authority of a party retaining
 2 discretion to interpret contract terms; it does not provide a blank check for that party to define
 3 terms however it chooses.”); *Curtis v Northern Life*, 147 Wash.App 1030, 2008 WL 4927365,
 4 at *5 (Wash. App. 2008) (“Ordinary contract principles require that, where one party is granted
 5 discretion under the terms of the contract, that discretion must be exercised in good faith-a
 6 requirement that includes the duty to exercise the discretion reasonably. Thus, good faith limits
 7 the authority of a party retaining discretion to interpret contract terms; it does not provide a
 8 blank check for that party to define terms however it chooses.”) (internal citations omitted)

9 **E. Instruction No. 18**

10 Microsoft takes exception to Instruction No. 18 for suggesting that frustration of
 11 purpose is only “one factor to consider in determining if Motorola breached.” That language
 12 should read “one factor that may, alone or in combination with other factors, demonstrate that
 13 Motorola breached” for the same reasons outlined in Microsoft’s exception to Instruction No.
 14 17. Additionally, item (4) should be removed as one of the purposes of the RAND
 15 commitment as Microsoft has not argued that Motorola’s conduct frustrated that purpose. The
 16 jury should not be instructed on it.

17 **F. Instruction No. 19**

18 Microsoft takes exception to Instruction No. 19 in its entirety and seeks a directed
 19 verdict that Motorola’s October 2010 demands were blatantly unreasonable and thereby
 20 breached the RAND commitment, for the reasons set forth in Microsoft’s March 30, 2012 and
 21 July 3, 2013 Motions for Summary Judgment and the state of the record at trial.

22 Microsoft takes exception to Instruction No. 19 for suggesting Microsoft’s only claim
 23 is for breach of the duty of good faith and fair dealing. The opening sentence should begin
 24 “One of Microsoft’s claims in this case is that Motorola’s ...”

1 Microsoft takes exception to Instruction No. 19 stating that “initial offers in a RAND
 2 licensing negotiation do not need to be on RAND terms.” For the reasons set forth in
 3 Microsoft’s August 18, 2011 summary judgment brief and reply brief (Dkt. Nos. 77, 96),
 4 Motorola’s initial offer was required to be RAND.

5 Additionally, in legal principle (2) the phrase “and in particular an offer must not be
 6 blatantly unreasonable” should be added in light of the Court’s June 6, 2012 summary
 7 judgment ruling (Dkt. No. 335.) Alternatively, the phrase “and in particular an offer must not
 8 be so high as to be a breach of that duty” should be added to legal principle (2) instead,
 9 because the economic terms of an offer alone may breach the duty if the jury finds the offer so
 10 high as to constitute, for example, commercially unreasonable conduct. Under legal principle
 11 (3), the language “however the size of an offer alone is not exclusively dispositive of whether
 12 Motorola has breached its duty of good faith and fair dealing” should be removed because the
 13 size of the offer may be exclusively dispositive. The following sentence should be modified to
 14 read “You may use that comparison to decide whether Motorola’s offer breached its duty of
 15 good faith and fair dealing, using the standards set forth in instruction No. 16.”

16 **G. Instruction No. 20**

17 Microsoft takes exception to Instruction No. 20 as to the last sentence of the second
 18 paragraph concerning the Court’s method of determining RAND by modeling a negotiation,
 19 which may mislead the jury into concluding that Motorola would have come to this or any
 20 other RAND royalty through negotiation.

21 Additionally, Microsoft takes exception to the statement of the RAND royalty rate for
 22 Motorola’s H.264 SEPs as 0.555 cents per unit, with the upper bound of a RAND royalty for
 23 Motorola’s H.264 standard essential patent portfolio being 16.389 cents per unit and the lower
 24 bound being 0.555 cents per unit. For the reasons set forth in Microsoft’s proposed findings of
 25 fact and conclusions of law following the November trial, the RAND royalty for Motorola’s

1 H.264 SEPs is 0.197 cents per unit, with a range of 0.065 and 0.204 cents per unit. (See Dkt.
 2 No. 621 at ¶¶345–46, 347–428.) Microsoft also takes exception to the statement of the upper
 3 bound being 19.5 cents per unit for Motorola’s 802.11 SEPs. For the reasons set forth in
 4 Microsoft’s proposed findings of fact and conclusions of law following the November trial, the
 5 upper bound for the RAND range for Motorola’s 802.11 SEPs is 6.5 cents per unit. (See Dkt.
 6 No. 621 at ¶453.)

7 **H. Instruction No. 21**

8 Microsoft takes exception to Instruction No. 21 in its entirety, in particular because it is
 9 based on the statement that “[t]he RAND commitment does not by itself bar standard essential
 10 patent owners from ever, in any circumstances, seeking injunctive relief to enforce their
 11 patents.” For the reasons set forth in Microsoft’s July 12, 2013 Opposition (Dkt. No. 740) to
 12 Motorola’s July 3, 2013 Motion for Partial Summary Judgment, the RAND commitment bars
 13 standard essential patent owners from seeking injunctions against implementers, and the jury
 14 should be so instructed, replacing the entirety of Instruction No. 21.

15 Additionally, Microsoft takes exception to Instruction No. 21 because it fails to instruct
 16 the jury that Motorola breached its RAND commitments if it sought injunctions without first
 17 making a RAND offer. *See Realtek Semiconductor Corp. v. LSI Corp.*, No. C-12-03451–
 18 RMW, 2013 WL 2181717, at *6 (N.D. Cal. May 20, 2013); *see* Dkt. No. 740 at 3–8.

19 **I. Instruction No. 22**

20 Microsoft takes exception to Instruction No. 22 because it fails to include two other
 21 legal grounds on which Microsoft did not repudiate its RAND rights, but that Motorola has
 22 presented evidence and argument suggesting otherwise. The statement “Microsoft did not
 23 repudiate or forfeit any of its rights under the contracts by arguing that Motorola’s standard-
 24 essential patents were invalid or not infringed by Microsoft” should be added to the instruction.
 25 For the reasons outlined in Microsoft’s bench memorandum (Dkt. No. 887), Motorola’s
 26

1 arguments to the contrary—suggesting that Microsoft was an unwilling licensee or not entitled
 2 to a RAND license because it did not concede the validity and essentiality of Motorola’s
 3 standard-essential patents—are wholly inconsistent with the conclusions reached by regulatory
 4 agencies investigating Motorola’s conduct and otherwise are without legal basis. The jury
 5 should be instructed to disregard those arguments. The statement “Microsoft did not repudiate
 6 or forfeit any of its rights under the contracts by filing lawsuits against Motorola on patents
 7 unrelated to the standards at issue here” should also be added. There is no authority for the
 8 proposition that as a matter of contract law, Motorola could condition the availability of a
 9 RAND license on the presence of other patent disputes with a potential RAND licensee.
 10 Motorola has never identified any term of the contracts or principle of contract law that would
 11 so suggest. In any event, Microsoft’s October 1, 2010 suits came before the November 9, 2010
 12 complaint in this action. Both the filing of those suits on patents wholly unrelated to the
 13 standards at issue here and the filing of this complaint were part of the factual background
 14 Motorola’s motion to dismiss brought on repudiation grounds in December 2010. *See* Dkt. No.
 15 36 at 9. But Motorola did not then and has not, through today, articulated how the filing of the
 16 October 1 suits had any impact on Motorola’s contractual obligations. The instruction is
 17 necessary to cure the confusion injected into the case by Motorola’s attempt to put Microsoft’s
 18 conduct on trial. Microsoft’s conduct is not relevant to whether Motorola satisfied its
 19 contractual obligations. Motorola’s own 30(b)(6) witness testified that Motorola understood
 20 it could not condition the availability of a license on RAND terms to its SEPs on a cross
 21 license to an implementer’s non-standard essential patents.

22 **J. Instruction No. 24**

23 Microsoft takes exception to Instruction No. 24 part (a) and would replace its content
 24 with “the costs that Microsoft incurred for relocating Microsoft’s distribution center to the
 25 Netherlands in Spring 2012 to avoid the consequences of the injunctive relief sought in

1 Germany.” The injection of only MMI and General Instrument Corporation presumes that the
 2 conduct of Motorola Solutions was unrelated to the consequences Microsoft endured in
 3 Germany, but the theory of Microsoft’s case as presented to the jury is that the Motorola
 4 entities—collectively—withheld from Microsoft through a hold up strategy a license to all
 5 relevant patents held by all entities essential to the two standards. Evidence in the record
 6 establishes Motorola, through Dailey, was unwilling to settle the H.264 issue alone and insisted
 7 in including all Microsoft non-standard essential patent rights sought by Motorola entities and
 8 the 802.11 standard-essential patents held by all of the relevant Motorola entities in any such
 9 discussion. In other words, Motorola collectively made the availability of a RAND license on
 10 H.264 contingent on a license to Microsoft’s non-SEPs and the 802.11 Motorola portfolio as
 11 well. That refusal to make available an H.264 license on RAND terms—for which Motorola
 12 Solutions shares liability—meant Microsoft, lacking a license, had to relocate from Germany
 13 in the face of the injunction. It is irrelevant that only MMI and General Instrument filed the
 14 German suit itself as all defendants contributed to the circumstances which required the
 15 relocation.

16 Additionally, Microsoft takes exception to Instruction No. 24 and would eliminate the
 17 portion of part (b) stating “Regarding part (b), you may only award such damages, if you find
 18 that Motorola’s lawsuits seeking injunctive relief, apart from Motorola’s general course of
 19 conduct, violated Motorola’s duty of good faith and fair dealing.” Microsoft’s ability to
 20 recover fees as damages should not be limited to a Motorola breach limited to the pursuit of
 21 injunctions. First, Motorola’s obligation was to grant licenses on RAND terms but it failed to
 22 do so, meaning Microsoft was deprived of a RAND license that would have immediately
 23 ended any injunctive lawsuit brought by Motorola. Accordingly those fees are a direct and
 24 foreseeable consequence of Motorola’s breach of its obligation to grant RAND licenses.
 25 Second, in the alternative, Microsoft would replace the identified statement of part (b) with
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1 “Regarding part (b), you may only award such damages if you find that Motorola’s lawsuits
 2 seeking injunctive relief, either alone or as part of Motorola’s general course of conduct,
 3 violated Motorola’s duty of good faith and fair dealing.” As drafted with the words “apart
 4 from Motorola’s general course of conduct,” the jury could find that Motorola’s course of
 5 conduct—including both the terms of the letters and the subsequent conduct of pursuing
 6 injunctions—breached the duty of good faith and fair dealing, but conclude that it cannot
 7 award fees defending against injunctions. The instruction as drafted could be read to suggest
 8 that the jury must ignore all of Motorola’s other conduct when assessing whether the pursuit of
 9 injunctions entitles Microsoft to this form of damages. Microsoft recognizes the additional
 10 language that suggests that the jury “shall consider the circumstances surrounding each
 11 lawsuit,” but the jury may be confused how to reconcile that direction with the prior direction
 12 to assess this issue “apart from Motorola’s general course of conduct.” As the Court explained
 13 in its Summary Judgment Order, “The argument for the exception’s application is simple: as
 14 explained above, in certain circumstances it may violate the duty of good faith and fair dealing
 15 for a SEP holder to seek an injunction to enforce a RAND-committed patent.” (Dkt. No. 843
 16 at 30, emphasis added.) The Court also observed that “[w]idespread adoption would be
 17 discouraged if standard implementers were forced to defend injunctive relief claims brought in
 18 bad faith with no possibility of recovering the attorney’s fees associated with doing so.” (*Id.* at
 19 31–32.) The jury may permissibly conclude that Motorola’s conduct in seeking injunctive
 20 relief was in bad faith because of the surrounding circumstances, which may include the
 21 excessive demands of the October 2010 letters. The jury awarding attorneys’ fees as damages
 22 in light of that finding would be entirely consistent with the legal principles outlined in the
 23 Court’s Summary Judgment Order, but the language “apart from Motorola’s general course of
 24 conduct” appears to bar the jury from taking those other circumstances into consideration.

Finally, the instruction fails to adequately direct the jury that if they find Motorola's lawsuits seeking injunctive relief, apart from Motorola's general course of conduct, constitutes a breach, they may award fees as damages even if they also find that Motorola's general course of conduct itself constitutes a breach. Accordingly, as an additional alternative Microsoft proposes the addition of the sentence, "If you find that Motorola's lawsuits seeking injunctive relief, apart from Motorola's general course of conduct, constitute a breach, but *also* find that Motorola's general course of conduct constitute a breach, you may still award Microsoft damages corresponding to its costs that Microsoft incurred in defending against lawsuits filed by Motorola seeking injunctive relief."

K. Instruction No. 26

Microsoft takes exception to Instruction No. 26 as the jury should be instructed that Motorola did not carry its burden to argue that the Orange Book procedure in Germany was a reasonable effort Microsoft could have taken to minimize its loss, because Motorola's witness Maximilian Haedicke could not identify the amount of damages that could have been minimized or avoided. The jury should also be instructed that Motorola did not carry its burden to show that Microsoft's efforts in defending itself in Motorola's injunctive actions were not reasonable.

L. Instruction No. 27

Microsoft takes exception to Instruction No. 27 because it lacks instruction on corporate knowledge, which should be included as "A corporation is considered to have any knowledge acquired by an employee of the corporation if the employee acquired that knowledge within the scope of his or her powers or duties. This is so without regard to whether the employee actually communicates the facts to other employees in the corporation." Motorola has put this at issue by claiming that one of its employees acting on behalf of the corporation was unaware of certain facts. An instruction on corporate knowledge is necessary

1 to resolve any confusion as to what *Motorola's* state of mind is considered to be—*Motorola*
 2 knows what its employees know. *See Deep Water Brewing, LLC v. Fairway Resources*
 3 *Limited*, 215 P.3d 990, 1011 (Wash. App. 2009) (“Generally, a principal is chargeable with
 4 notice of facts known to its agent. This follows the duty of an agent to communicate his
 5 knowledge to the principal”) (citations omitted); *American Fidelity and Casualty Company,*
 6 *Inc. v Backstrom*, 287 P.2d 124, 127 (Wash. 1955) (“The knowledge of the agent is the
 7 knowledge of the principal, without regard to whether the agent communicates the facts to it”);
 8 *Miller v. United Pacific Casualty Insurance Co.*, 60 P.2d 714, 718–19 (Wash. 1936) (rejecting
 9 argument that “since the true fact of ownership of the Packard sedan was not communicated to
 10 it by Kalin, it is not bound by the knowledge which Kalin had”).

11 **II. Exceptions to Verdict Form**

12 Microsoft takes exception to Item 3 on the verdict for suggesting that only MMI and
 13 General Instrument Corporation’s having breached their contractual commitments to the ITU is
 14 relevant to the recovery of relocation costs as damages. As outlined above in Microsoft’s
 15 exceptions to Instruction No. 24, Motorola Solutions’ course of conduct is part of Microsoft’s
 16 breach theory and is causally linked to Microsoft’s German relocation in the face of the
 17 German injunction, regardless of the fact that only MMI and General Instrument filed the
 18 German case.

19 Microsoft takes exception to Item 4 on the Verdict Form, which should read “Attorneys
 20 fees and litigation costs may only be awarded if you find that Motorola’s conduct in seeking
 21 injunctive relief was part of a breach of Motorola’s duty of good faith and fair dealing.” First,
 22 the Item should begin “Attorneys fees and litigation costs may only be awarded as damages
 23 . . .” to avoid any confusion as to the nature of Microsoft’s claim for fees and costs as damages.
 24 Second, the “apart from Motorola’s general course of conduct” language currently appearing in
 25 Item 4 is incorrect for the reasons outlined above concerning Instruction No. 24, Breach of

1 Contract – Measure of Damages. As drafted, the jury could find that Motorola’s course of
 2 conduct—including both the terms of the letters and the subsequent conduct of pursuing
 3 injunctions—breached the duty of good faith and fair dealing, but conclude that it cannot
 4 award fees defending against injunctions. The instruction as drafted could be read to suggest
 5 that the jury may or must ignore all of Motorola’s other conduct when assessing whether the
 6 pursuit of injunctions entitles Microsoft to this form of damages. As the Court explained in its
 7 Summary Judgment Order, “The argument for the exception’s application is simple: as
 8 explained above, in certain circumstances it may violate the duty of good faith and fair dealing
 9 for a SEP holder to seek an injunction to enforce a RAND-committed patent.” (Dkt. No. 843
 10 at 30, emphasis added.) The Court also observed that “[w]idespread adoption would be
 11 discouraged if standard implementers were forced to defend injunctive relief claims brought in
 12 bad faith with no possibility of recovering the attorney’s fees associated with doing so.” (*Id.* at
 13 31–32.) The jury may permissibly conclude that Motorola’s conduct in seeking injunctive
 14 relief was in bad faith because of the surrounding circumstances, which may include the
 15 excessive demands of the October 2010 letters. The jury awarding attorneys’ fees as damages
 16 in light of that finding would be entirely consistent with the legal principles outlined in the
 17 Court’s Summary Judgment Order, but the “by itself” language erroneously suggests to the
 18 jury it cannot take those other circumstances into consideration.

19 For those same reasons, 4(a) should read “Do you find that Motorola’s conduct in
 20 seeking injunctive relief is part of a breach of Motorola’s duty of good faith and fair dealing
 21 inherent in its contractual commitment to the IEEE?” and 4(b) should read “Do you find that
 22 Motorola’s conduct in seeking injunctive relief is part of a breach of Motorola’s duty of good
 23 faith and fair dealing inherent in its contractual commitment to the ITU?”

24

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1 DATED this 3rd day of September, 2013.

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CERTIFICATE OF SERVICE

I, Nathaniel Love, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 3rd day of September, 2013, I caused the preceding document to be served on counsel of record in the following manner:

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20 DATED this 3rd day of September, 2013.
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